

# TERMS AND CONDITIONS

The End User (as identified in the TwiinCloud (Pty) Ltd application form) hereby applies for the services provided by TwiinCloud (Pty) Ltd ("TwiinCloud") (registration number: 2013/097207/07) and in consideration thereof the End User hereby irrevocably accept the below terms and conditions, forming a legal and binding contract (hereinafter referred to as "the Agreement").

## 1. Provision of Products and Services

- 1.1. TwiinCloud, in accordance with the payment of fees as described in paragraph 5, agrees to make the following available to the EU:
  - 1.1.1 Backup Client Software (hereinafter referred to as "the application") or alternative software with similar functionality; and
  - 1.1.2 A data backup service (hereinafter referred to as "the service"); and/or
  - 1.1.3 A support call service; and/or
  - 1.1.4 An onsite call-out service.
- 1.2. The use of the application will be governed by the provisions of the End-User Licence Agreement (hereinafter referred to as "the EULA"), which the EU will be deemed to accept on installation of the application. If the terms of the EULA are not accepted, the EU will not be able to use the application and the service. In this regard, please refer to the provisions of paragraph 3.2.
- 1.3. The application will be made available to the EU in accordance with the license set out in the EULA for the duration of the Agreement. The EU acknowledges that it/he/she does not own the application and will not be granted any ownership right in it. The EU may use the application only in conjunction with the service and in accordance with the Agreement and the EULA. Any other use is strictly prohibited. The EU will have no right to use the application or service after termination of the Agreement.
- 1.4. The End User specifically agrees not to make any attempt to modify, decompile or reverse engineer the application or otherwise discover the source code or underlying processes or algorithms of the application, other than as permitted by applicable law.
- 1.5. The services to be provided in accordance with the Agreement shall include Off-site Backup Services using the application or any alternative equivalent provided by TwiinCloud.
- 1.6. The End User will only be able to recover data from the End User's successful backups carried out using the application or any alternative equivalent provided by TwiinCloud.
- 1.7. End Users must register a single account using the backup software, and use this account for one or more workstations to be backed up. This account must be based upon a valid email address, as enforced by the account registration process. Any account email addresses which are found to be invalid, or not contactable for the purposes of billing, will be immediately deactivated, and the backup workstations de-authorized.
- 1.8. If the End User is aware of a fault with the application or the service or a failure in its backups, the EU must report the fault to TwiinCloud in writing or by no later than 36 (THIRTY SIX) hours from the discovery of the fault and before the next scheduled backup. TwiinCloud shall have no liability for any loss of data arising from a fault of which the EU was aware, but which was not notified to TwiinCloud in accordance with this clause.
- 1.9. If the End User is unable to restore the data because a failure of TwiinCloud systems or network, TwiinCloud will use its reasonable endeavours to make the data available for access from within the software or web interface within a reasonable period of time.
- 1.10. The following services will be made available to you at an additional cost:
  - 1.10.1 Data Recovery Service from our servers onto a CD/DVD disc or external Hard Drive.
  - 1.10.2 On-site Software Installation Assistance.
  - 1.10.3 Data Seed Loading, which consists of transferring files over an external hard drive directly onto the server on the first backup in order to save time and bandwidth for the End User. All following backups are carried out over the standard method by using the application. All data is encrypted and there is no access to your data by TwiinCloud staff.
  - 1.10.4 Disaster Recovery and Data Security Consultation.

Where additional services are available at an additional charge, the details of such services including performance dates and any applicable charges must be agreed between TwiinCloud and the End User prior to such services being provided.

- 1.11. The use of the application and service is dependent on the End User obtaining and maintaining a suitable internet connection and/or a direct connection from the End User's computer to our servers over a leased line or equivalent connection. The End User is responsible for all costs in respect of such connections. TwiinCloud cannot be responsible for failures relating to leased lines, fibre optic connections, SDSL connections, ADSL connections, direct private connections, local or external ethernet connections, public internet connections or any other connections linking the End User's workstation(s) to the TwiinCloud network and this will be treated as an event outside TwiinCloud's control.
- 1.12. TwiinCloud acknowledges that the data stored by means of the services may include personal data and that it may act as a data processor on the EU's behalf. It is the EU's responsibility to ensure that adequate consents from data subjects in respect of the processing to be carried out by TwiinCloud and, without limitation, to the storage of personal data by TwiinCloud. By accepting

these Terms and Conditions as part of the Agreement, you warrant and undertake that you have obtained and will obtain such consent and you shall indemnify and keep indemnified TwiinCloud against any liability, costs or damages arising due to the End User's breach of this clause.

1.13. The application and services are provided for the purposes of data backup only. You are granted no right to use them for the following purposes:

1.13.1. In order to use or back up any application that may involve risks of death, personal injury, severe property damage or environmental damage;

1.13.2. In order to use or back up life support applications, devices or systems;

1.13.3. In order to back up information, data or material that (a) infringes on the intellectual property rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation; (c) is defamatory, unlawfully threatening, or unlawfully harassing; (d) is obscene, pornographic or indecent in violation of applicable law; (e) contains any virus or other programming routine intended to damage any system or data; or (f) is provided in breach of any prior contractual commitment to any third party.

If TwiinCloud becomes aware of any use of the services in breach of this clause it may, at its option, delete any information, data or material which in its reasonable opinion is in breach of this clause and/or terminate the Agreement. In addition, you shall indemnify and keep indemnified TwiinCloud against any liability, costs or damages arising due to your use of the application and services in breach of this clause.

## 2. Definitions

In the Agreement, unless inconsistent or otherwise indicated by the context, the following terms shall bear the following meanings:

2.1 "*Agreement*" means these terms and conditions (together with the TwiinCloud application form) to which the EU will be bound and which the EU accepts that they/it/he/she have read, understood and shall be bound to every term therein contained. Upon signature by the EU this agreement is a binding agreement between the EU and TwiinCloud.

2.2 "*Application form*" means the application form duly completed by the EU setting out the EU's details which will form part of these terms and conditions.

2.3 "*Commencement date*" means the date that TwiinCloud deploys and installs the application on the EU's workstation(s) after signature of these terms and conditions and the application form by the EU and/or its authorised representative.

2.4 "*Contract Price/Charges/Fees*" means the charges/contract price/fees as set out in paragraph 5.

2.5 "*Days*" means every weekday of the month which includes Saturdays, Sundays and public holidays.

2.6 "*End User*" means the person and/or company entering into the agreement with TwiinCloud binding itself to these terms and conditions for the services provided by TwiinCloud (also referred to in the agreement as "EU").

2.7 "*End User's Workstation*" means the computer, any hardware and software applicable thereto which the EU will use to install the application and to utilise the services provided by TwiinCloud through the EU's own internet access.

2.8 "*Monthly fee*" means the monthly charges/costs/fees by TwiinCloud for the services provides in terms of these terms and conditions.

2.9 "*Parties*" means the EU and TwiinCloud.

2.10 "*TwiinCloud*" means TwiinCloud (Pty) Ltd, a private company duly incorporated in the Republic of South Africa with registration number 2013/097207/07 who will be providing the software and services to the EU based on the terms and conditions herein.

## 3. Termination and Suspension

3.1 This Agreement will terminate upon the earliest to occur of the following:

3.1.1 The Agreement is terminated under paragraph 1.12 or 3.2; or

3.1.2 TwiinCloud receives written notice from you that you wish to terminate the Agreement; or

3.1.3 The End User has failed to pay fees due under paragraph 5 of this Agreement within 30 (THIRTY) days of their due date or otherwise breach the Agreement; or

3.1.4 The EU gives written notice to TwiinCloud that it is in breach of the Agreement and TwiinCloud does not remedy such breach within 30 days of receipt of the notice. You will not be entitled to any refund of fees already paid in the event of termination, unless you terminate in accordance with this clause or paragraph 3.2.

3.2 The End User has the right to terminate the Agreement and receive a full refund of fees paid if notice of cancellation has been given to TwiinCloud within the first 30 (THIRTY) days after placing the order.

3.3 Upon termination of the Agreement for whatever reason:

3.3.1 The End User will have no further right to use the application and must uninstall and delete it from its workstation and destroy any other copies of it in any form, including copies on its hard drive and backup disks.

3.3.2 TwiinCloud will remove and destroy the End User's entire backed up data within 60 (SIXTY) days after the termination date of the Agreement without liability for loss or damage.

3.4 In the event of there being any breach of the terms and conditions on the part of the End User, then, and without notice to the EU, TwiinCloud may, without prejudice to any other rights that TwiinCloud has in terms of this agreement:

3.4.1 Suspend the EU's access to the TwiinCloud service as contained on its network; and/or

3.4.2 Suspend the EU's ability to restore any backups.

3.5 In the event of there needing to be any modification, maintenance or remedial work which needs to be undertaken to the application, to the services or to the network where the data has been stored, the EU accepts such suspension of services.

3.6 Without prejudice to any rights which TwiinCloud may have in terms of these terms and conditions the EU acknowledges and agrees and accepts that TwiinCloud may terminate its services and this agreement for any reason whatsoever upon written notice which written notice shall take immediate effect to the EU.

#### **4. Supply and installation of application and services**

The EU irrevocably agrees, accepts and undertakes that:

4.1 Upon the commencement date and provided the EU has completed the application form the EU will then be entitled to utilise the application for backup purpose.

4.2 The application so provided by TwiinCloud is provided by TwiinCloud at the EU's sole risk and that the EU acknowledges and accepts that the application can only correctly function and operate on the EU's system/s provided that the EU has the appropriate and applicable computer hardware together with the appropriate operating platform for the application to operate together with internet service, capability and capacity. The EU accepts that without such service, capability and capacity the application will not correctly function and operate.

4.3 TwiinCloud's only obligation is the providing of the application and it is the EU's responsibility to ensure that it has the appropriate and applicable computer, hardware and software platform together with correct and sufficient internet capability / connectivity to ensure the usage of the software. The EU shall be solely responsible for all its/his/her costs associated to the computer/hardware/software platform and internet connectivity to ensure the correct functioning of the software.

4.4 The EU shall be, irrespective of whether the application is operating or not on the EU's system, liable for the costs as per the agreement.

4.5 TwiinCloud shall utilise its best endeavours to provide the application, however, in the event of there being a delay in the providing of the application, the EU acknowledges that the agreement cannot for such reason be cancelled.

4.6 Upon the commencement date and upon payment of the initial costs, the EU will be entitled to download/install the application onto the EU's workstation.

#### **5. Charges/Contract Price**

The EU irrevocably agrees, accepts and undertakes that:

5.1 For the services provided by TwiinCloud the End User shall make payment, on a monthly basis in advance, to TwiinCloud, which amount may, by notice, be increased.

5.2 Further charges/ increases apart from the amount as mentioned in paragraph 5.1 may be levied against the EU upon written notice by TwiinCloud in respect to the increase which increase shall have immediate effect and shall be invoiced the following month.

5.3 It is agreed upon the commencement of the agreement that:

5.3.1 The first payment shall be done on the 7<sup>th</sup> day of the month following the commencement date of this agreement.

5.3.2 That first payment shall include the cost on a *pro rata* basis for the previous month and shall include the following month's charges, i.e. and for clarity purposes, in the event of the EU signing the agreement on the 10<sup>th</sup> of a certain month then a payment shall be presented on the 7<sup>th</sup> of the following month and shall include the pro rated amount from the 10<sup>th</sup> of the previous month until the 1<sup>st</sup> of the following month and shall include the following month's instalment.

5.4 All payments are made monthly in advance and shall be received in full by the 1<sup>st</sup> day of the month.

5.5 Upon reasonable written notice to the EU TwiinCloud may vary its invoicing and payment procedures and requirements.

#### **6. Limitation of liability**

The end user irrevocably agrees and acknowledges that:

6.1 Without detracting from any of the provisions of the terms and conditions as contained herein, TwiinCloud, its directors, employees and/or agents shall not be, in any manner, means or form, liable to the EU for any loss or damage that the EU, its directors and/or employees and agents and/or property may suffer, howsoever arising, which the end user, directors, employees may suffer.

6.2 TwiinCloud will not be in any way responsible for losses, damages (whether direct or consequential) or delays howsoever caused or arisen and it is specifically recorded that the EU will indemnify and hold TwiinCloud harmless from any losses and/or damages, whether direct or indirectly, whether consequential or not, included but not limited to the following reasons:

6.2.1 TwiinCloud fails for any reason whatsoever to provide the application;

6.2.2 That the services so provided by the application is interrupted, suspended or terminated for whatever reason; and/or

6.2.3 That the EU is unable to retrieve or restore the backed up data for whatever reason;

6.2.4 In the event of TwiinCloud having lost or misplaced the backed up data, or the application not being able to restore the backed up data;

Whether such losses and/or damages as aforementioned was/is caused by any negligent act or omission on the part of TwiinCloud.

6.3 That the EU, its employees, directors and/or agents shall hold TwiinCloud harmless from any losses and/or damages howsoever arising, and further the EU hereby indemnifies and holds TwiinCloud harmless from any claim howsoever arising.

6.4 It is specifically recorded that the EU hereby holds TwiinCloud harmless, specifically, in respect of the unavailability of the backed up data.

## 7. General

7.1 The EU chooses his/her/its *domicilium citandi et executandi* address where it will accept all notices, written demands to the address as the address indicated on the application form.

7.2 TwiinCloud elects its *domicilium citandi et executandi* where it will accept all written notices as 42 Esmarelda Crescent, Robindale, 2194.

7.3 Either party may change its *domicilium address* by written notice to the other.

7.4 In the event of there being a change of ownership of the EU, then the EU shall, in writing, within 7 (seven) days of such change in ownership of the EU or should the EU be a company, of its share transactions whereby the majority shareholding is effected, notify TwiinCloud, failing which notice the entire balance owing as stipulated in paragraph 5.1, whether due or not, will immediately be deemed to be due and payable by the EU. Upon receipt of the notice referred to herein, TwiinCloud shall have the election to treat any outstanding amount whether due or not, as immediately payable.

7.5 The EU acknowledges and agrees that it never in any way, manner, means or form has any form of title or interest or ownership or entitlement to ownership towards or in connection with the application or the services, which will all at all times remain that of TwiinCloud.

7.6 Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace in the part of TwiinCloud shall not in any way operate or be deemed to be a waiver by or operate as an estoppel against TwiinCloud of any rights under the agreement or to be construed as an novation thereof.

7.7 The EU consents that at the option of TwiinCloud (who shall be entitled but not obliged hereunder), any proceedings against the EU may be brought through the Magistrate's Court holding jurisdiction notwithstanding that the value of the claim may exceed the Magistrate's Court's jurisdiction.

7.8 Each clause of these conditions is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause/ clauses shall not affect the balance of these terms and conditions, which shall remain in full force and effect.

7.9 The EU hereby irrevocably and *in rem suam* cede, pledge, assign, transfer and make over unto and in favour of TwiinCloud all of its rights, title, interest, claim and demand in and to all its claims/debts/book debts of whatsoever nature and description and howsoever arising which the EU may now or at any time hereafter have against all or any person, company, firm or partnership without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter become due and owing by the EU to TwiinCloud from whatsoever cause or obligation howsoever arising which the EU may be or become bound to perform in favour of TwiinCloud.

7.10 Should it transpire that the EU at any time entered into prior deeds of cession or otherwise disposed of any of the rights, title and interest, in and to any of the debts which will from time to time be subject to the cession, and then the cession shall operate as a cession of all the Applicant's reversionary rights. Notwithstanding the terms of the foregoing cession, the EU shall be entitled to institute action against any of the debtors provided that all sums of the EU collects from its debtors shall be collected on behalf of TwiinCloud and that TwiinCloud shall at any time be entitled to terminate the EU's rights to collect such monies/debts.

7.11 In the event of payment not being made as per this agreement then the EU agrees that TwiinCloud shall be entitled to charge interest at a rate of 2% per month on all amounts outstanding from due date, which interest shall be compounded and capitalised monthly in advance, provided however, that nothing contained herein shall be interpreted as obliging TwiinCloud to afford the EU any such indulgence to effect payment after due date.

7.12 In the event of payment not made within 4 calendar days of the due date then the EU agrees that TwiinCloud shall be entitled to suspend services for the duration until payment has been received in full.

7.13 All payments made by the EU shall be inclusive of VAT.

- 7.14 The rights and obligations of the EU in terms of the agreement may not be ceded or delegated to any third party. The rights and obligations of TwiinCloud in terms of the agreement may be ceded and delegated by it to any other party on written notice to the EU.
- 7.15 TwiinCloud may, at its sole discretion, amend and/or change any terms and conditions of this agreement as a result of any amendments to any legislation.
- 7.16 In the event of the EU breaching any terms of this agreement and in the event of TwiinCloud electing to call for acceleration, then, in such event the EU agrees that TwiinCloud will be entitled to present for payment an invoice for the full duration of the agreement, of the EU's banking account on the 7<sup>th</sup> of the following month of the breach.
- 7.17 In the event of TwiinCloud needing to institute legal action against the EU for recovery of any amounts in terms of this agreement or for any damages, the EU acknowledges and agrees that should TwiinCloud instruct its attorneys or collection agents to collect any overdue amounts, or to take any action against the EU in the implementation or protection of TwiinCloud's rights, TwiinCloud shall be entitled to recovery of legal or collection costs arising therefrom, on a scale as between attorney and own client. The EU shall further be responsible for any collection commission and/or disbursements including Advocate's charges as incurred in such recovery.
- 7.18 In the event of the EU being placed under administration, sequestration or liquidation, or suffer any form of legal disability which may impact the terms of this agreement, TwiinCloud shall be, without any prejudice to its rights contained in this agreement, entitled to immediately terminate the agreement.
- 7.19 The EU further undertakes in favour of TwiinCloud that it shall not utilise the application in any immoral or for any unlawful purpose and further accepts that it will at all times adhere to the security policies and any management security that may from time to time be implemented by TwiinCloud.
- 7.20 The EU consents to TwiinCloud sharing information of his account with TwiinCloud, with other credit granters and credit information agents. Information shared with such credit granters and agents is used to make credit granting decisions, to prevent fraud and to manage risk.
- 7.21 The EU further consents/ authorises it to receive promotional updates and survey reports and consents and authorises that TwiinCloud shall be entitled to report any bad rated payments by the EU to any registered credit reference agency or bureau.
- 7.22 The EU further authorises and consents that TwiinCloud may disclose the EU's name, address and any personal details that may be reasonably necessary for TwiinCloud to properly perform its functions or protect its interest. It further agrees and consents that in the event of TwiinCloud and its directors and/or employees needing to give evidence in any legal action and/or application in favour or against the EU, then, in such event although TwiinCloud and/or its directors and/or its employees may not be compelled to do so, in the event of it being subpoena to do so or willing to do so, then in such event the hereby fully indemnifies TwiinCloud and/or its employees and/or its directors against the giving of such information where such information may cause harm and/or damage to the EU.
- 7.23 These terms and conditions contain the entire agreement between the parties and any other terms thereof whether expressed or implied or excluded here from and any variation, cancellation or addition to these terms and conditions shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorised signatories. This agreement shall be governed by the Laws of the Republic of South Africa. The EU warrants that the information submitted in this application is true and correct in all respects and that the EU is entirely familiar with the terms and conditions contained herein. The EU further warrants that he/she has read and understood the terms as contained herein.
- 7.24 Neither party may rely on any representation which allegedly induced that party to enter into the agreement, unless the representation is recorded in this agreement. No agreement varying, adding to, deleting from or cancelling the agreement and no waiver of any rights under the agreement shall be effective unless reduced to writing and signed by both parties.
- 7.25 For the duration of this agreement and for a period of 5 (five) years thereafter, each party hereby undertakes to keep all information (written or oral) concerning the business affairs of each other and which they have obtained through their business relationships and discussions as confidential.

## **8. Blacklisting/Adverse Records**

- 8.1 The EU agrees that without prejudice to any of TwiinCloud's rights in terms of this agreement, that TwiinCloud may, at its sole discretion, notify credit bureaus of the EU's default.

## **9. Disclosure of confidential information to third parties**

- 9.1 Neither party may without the written consent of the other disclose any information pertaining to their business relationship and such information that either party may be privy to can only use solely in connection with the implementation of this agreement, however, the confidentiality clauses as aforementioned will not apply to the whole or any part of the information to the extent that it is trivial or obvious, already in the other's possession, in a public domain through no fault of the receiving party, alternatively, through a Court ordered subpoena.